# UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 28

NV ENERGY, INC.

**Employer** 

and

Case 28-UC-243

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 396, AFL-CIO

Petitioner

#### DECISION AND ORDER CLARIFYING BARGAINING UNIT

The Petitioner, International Brotherhood of Electrical Workers, Local 396, AFL-CIO (the Petitioner), seeks to clarify its contractual bargaining unit (the Unit) of approximately 1,950 employees of NV Energy, Inc. (the Employer) made up of employees involved in the generation, distribution, and transmission of electric power in the Employer's Southern Nevada operations by adding some 14 employees classified as plant operators and maintenance specialists at the Employer's Walter E. Higgins Power Plant (the Higgins Plant) and the job classification of material/warehouse personnel to the Unit. The Employer opposes the inclusion of these employees and job classifications in the Unit on the grounds that the Higgins Plant is a stand-alone generating station whose employees are separate and apart from the Unit and do not meet the community-of- interest standard for accretion. For the reasons more fully set forth in this decision, I shall clarify the Unit to include classifications of plant operator and maintenance specialist at the Higgins Plant because the Employer has integrated the Higgins Plant into its overall operations in Southern Nevada, and the Higgins Plant employees share a sufficient community of interest with the Unit employees to be accreted into the Unit.

#### **DECISION**

Upon a petition filed under Section 9(b) of the National Labor Relations Act, as amended (the Act), a hearing was held before a hearing officer of the National Labor Relations Board (the Board). Upon the entire record in this proceeding, I find:

1. **Hearing and Procedures**: The Hearing Officer's rulings made at hearing are free from prejudicial error and are affirmed.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> On February 24, 2009, pursuant to the Employer's request for an extension of time, the Regional Director ordered that briefs be filed with the Regional office by March 6, 2009. On March 9, 2009, the Employer moved

- 2. **Jurisdiction**: The parties stipulated, and I find, that the Employer, NV Energy, Inc., a Nevada corporation, with its principal office and place of business in Las Vegas, Nevada, is a public utility engaged in generating, transmitting, and distributing electrical power to commercial and residential customers in the State of Nevada. During the 12-month period ending January 26, 2009, the Employer, in conducting the business operations described above, derived gross revenues in excess of \$1,000,000. During the same period, the Employer purchased and received at its Nevada facilities goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Nevada. Accordingly, I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and, therefore, asserting jurisdiction over the Employer in this matter will accomplish the purposes of the Act.
- 3. **Labor Organization Status and Claim of Representation**: The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
- 4. **Statutory Question**: A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. By its petition, the Petitioner seeks to add to the parties' existing Unit approximately 14 employees employed by the Employer at the Higgins Plant. There are approximately 1,950 employees in the Unit.

In this Decision, I shall discuss the record facts concerning the Employer's operations, management hierarchy, and structure; its acquisition and integration of the Higgins Plant; and the composition of the Unit. I will then discuss the record facts relating to community of interest between the Unit and the Higgins Plant employees and analyze those facts under the Board's applicable case law.

# A. The Employer's Operations

The Employer is a public utility that generates its own electricity and acquires electricity from other sources, which it then transmits and moves to customers within the State of Nevada and a small portion of California near Reno and Carson City, Nevada. It employs some 3,250 employees throughout Nevada, who are grouped into two bargaining units located in the northern and southern parts of the State. It owns and operates 10 electricity generating stations throughout Nevada and has an ownership interest in two coal-fired generating stations: the Navajo station located in Page, Arizona, and the Mojave station located in Laughlin, Nevada. The Mojave station is not currently operating. Of the ten generating stations that it owns and operates, eight are gas-fired plants and two are coal-fired. Seven of these generating stations or plants are located in Clark County, Nevada, and are named as

to strike the Petitioner's post-hearing brief because the copy served upon the Employer via certified mail reflected that it was placed in the mail on March 6, 2009, and because it does not contain any citations to the record. The Petitioner's post-hearing brief was hand-delivered to the Resident Office in Las Vegas, Nevada on March 6, 2009. I consider the Petitioner's post-hearing brief to be timely filed and sufficient in form, and I hereby deny the Employer's motion to strike.

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follows: Reid Gardner, Harry Allen, Silverhawk, Chuck Lenzie, Sunrise, Clark, and Higgins, the generating plant at issue in this proceeding.

The Employer's generating stations are scattered throughout Clark County. For example, the Reid Gardner Plant is located in the Moapa Valley about 70 miles north of Las Vegas. The Higgins Plant is located about 28 miles southwest of Las Vegas near the California-Nevada border. The nearest generating station to the Higgins Plant is the Clark Plant, which is located about 45 miles northeast of the Higgins Plant.

The Employer operates sub-stations attached to its generating stations. A fence separates sub-stations from generating stations. The electricity generated at generating stations must pass through a switchyard and a sub-station before it enters the "grid" or network of sub-stations and lines for transmission and distribution. The Employer also operates sub-stations next to generating stations that it does not own. There are at least 29 generating units in Southern Nevada that the Employer does not own or operate. Before it acquired the Higgins Plant, the Employer operated a sub-station known as Bighorn at that location. It continues to operate the Bighorn sub-station that receives electricity from the Higgins Plant, which feeds 230,000 volts on two transmission lines to the Arden sub-station for further transmission and distribution. While these sub-stations and transmission lines do not contain facilities where employees regularly report to work, their operations require occasional visits by Unit employees who perform work at or near sub-stations and transmission lines.

At its generating stations, the Employer employs control operators who operate the controls of equipment used to generate electricity; maintenance technicians who maintain the operating equipment; and material specialists who receive, store, and issue tools, supplies, and equipment. As they generate electricity, control operators interact and communicate with the Employer's generation dispatchers, who work away from the generating stations. The Employer utilizes three types of dispatchers to manage its generation and transmission of electricity: the generation dispatcher, who is responsible for all generation of electricity at the generating stations; the balancing authority operator, who is responsible for the interchange of electricity, that is, what electricity is purchased and sold by the Employer; and the transmission operator, who is responsible for the operation of sub-stations and transmission lines and the monitoring and maintenance of transmission voltage levels. If generation from one station is lost, the generation dispatcher will seek to make up the loss through other generating stations. If that is not possible, the generation dispatcher will tell the marketer or power trader to purchase electricity from an outside source. The transmission operator controls electricity generated from the Employer's own stations and those stations that the Employer does not own and communicates with both types of stations concerning electricity generation.

The Federal Energy Regulatory Commission, the National Electric Reliability Council, the Western Electric Coordinating Council, and the Rocky Mountain Desert Southwest Reliability Coordinator are among the regulatory agencies and organizations that set restrictions, standards, and guidelines for the Employer and all companies that generate and transmit electricity. Restrictions include the open access of non-utilities to both the

generation and transmission of electricity, the functional separation of energy generation from energy transmission, and the providing of transmission information to other generators and market participants. Guidelines cover such operations as reliability and outages. Reliability standards permit the Employer's balancing operators to direct generating stations owned by the Employer and other generators to raise or lower the output of electricity produced and maintain voltage on the grid within certain levels. Outages by the Employer must be coordinated with transmission operators and balancing authorities of other generators to ensure that there is adequate electricity available from all sources.

# B. Management Hierarchy

Michael Yackira is the President and Chief Executive Officer of the Employer. Robert Denis is the Senior Vice President, Energy Supply. He is responsible for contracts the Employer develops to purchase electricity from outside sources and to sell electricity to outside sources. He is also responsible for natural gas procurement to power the Employer's gas-fired generating plants and for new generation construction. Reporting to Denis is Kevin Geraghty, Vice President, Power Generation, who is responsible for the generation of electricity within the Employer. The rest of the Employer's Generation team is located in Las Vegas.

Reporting to Geraghty are Plant Directors, including Tom Price, who oversees the Harry Allen, Silverhawk, and Chuck Lenzie Plants. Price also served as the Interim Plant Director for the Higgins Plant during the ownership transition from Reliant to the Employer, which is described more fully in the following section. Brian Paetzold is the Plant Director for the Harry Allen Plant, reporting through Tom Price based on some shared responsibilities. David Sharp is the Plant Director for the Reid Gardner Plant. Steven Page is the Operations Manager for the Clark Plant and the Acting Director for the Clark Region that includes the Clark, Sunrise and Higgins Plants. Reporting to Steven Page at the Higgins Plant are Felix Fuentes, Operations Manager, and Ron McCallum, Maintenance Manager.

# C. Acquisition of the Higgins Plant

Reliant Energy Services, Inc. (Reliant) operated what it called the Bighorn Power Plant from November 2002, until it was purchased by the Employer in 2008, and renamed the Walter E. Higgins Power Plant. According to the Employer, it acquired this generating station to cover its peak load or demand for electricity. Demand for electricity varies from a low in the winter to peak demand during the summer months. In the year-period before Reliant turned the plant over to the Employer on October 21, 2008, Reliant shut down the plant in November 2007, and brought it back to generate electricity during July 2008. It continued to generate electricity until shortly after the Employer assumed possession on October 21. As the Employer's Interim Plant Director, Tom Price made sure that the Employer acquired all items sold by Reliant, from the turbines to cell phones and computers, and assisted in scheduling an outage for the plant shortly after acquisition because the generating equipment had enough usage time that an outage and inspection were due. Thereafter, the Employer conducted inspections and other work necessary to begin operating the plant. The Employer re-energized the Higgins Plant and began generating electricity

during early January 2009. Dariusz Rekowski, the Employer's Director of Outages and Work Management, became interim director for the Higgins Plant once the generating units were operating reliably. Steven Page now serves as interim plant director of the Higgins Plant.

# D. Operation of the Higgins Plant

The Higgins Plant generates electricity through equipment identical to that used by the Silverhawk Plant, except for a different manufacturer of the steam turbines. Although this equipment is the same, the Higgins Plant operates its generation equipment with two operators, as opposed to the three operators the Silverhawk Plant utilizes. At the Higgins Plant, the electricity generated feeds into step-up transformers that increase the voltage to 230,000 volts before its passes from the plant. There is also a step-down unit that reduces voltage to levels that operate the plant's equipment. According to the Employer, the Higgins Plant represented a classic independent power producer with respect to its staffing levels. Thus, it was generally lighter staffed with more sharing of duties and more responsibilities for staff members. In this regard, the job descriptions for maintenance specialists and senior power plant operators at the Higgins Plant list the ability to determine work priorities and assign work to employees under Job Qualifications. According to a Higgins Plant Maintenance Specialist, he seeks agreement by other Maintenance Specialists for about a third of the team's priorities.

The Employer, through its human resources department, interviewed and hired all the former Reliant employees except for two managers. Currently, there are nine plant operators who report to Operations Manager Felix Fuentes and five maintenance specialists reporting to Maintenance Manager Ron McCallum. The Employer utilizes Daniel Torres, an employee of an outside contractor, as a warehouse employee. There is a limit for length of use of such employees based on either total hours worked or months worked.

# E. Integration of the Higgins Plant

Upon the acquisition of the Higgins Plant, the Employer has integrated, or is in the process of integrating, the computers and telephones at the Higgins Plant into the Employer's communication system. With the agreement of the Petitioner, it temporarily assigned a Unit employee to implement the Employer's "Passport" system at the Higgins Plant. Passport is a means to identify and request parts and materials. Since the acquisition, the Clark Plant obtained a vibration probe from the Higgins Plant for use in monitoring the amount of vibration when turbines are spinning. Also, after the acquisition, the Higgins Plant obtained a power panel from the Silverhawk Plant for use during the Higgins Plant outage. The Higgins Plant has since returned the panel to Silverhawk.

Former Reliant employees at the Higgins Plant attended employee orientation conducted by the Employer at its Pearson administrative and headquarters office building in Las Vegas. The Employer also issued the Higgins Plant employees identification numbers and cards, e-mail addresses, and human resources partners; classified the Higgins Plant employees as MPAT, Management/Professional/Administrative/Technical; placed the Higgins Plant employees under the Employer's payroll and leave system; and assigned a

human resources representative to the Higgins Plant employees. The Employer's safety representative, Christine Henshaw, serves both the Higgins and Clark Plants. The Employer applies its safety Work Practice Manual to the Higgins Plant and its employees.

The Employer made no change in the operations or maintenance activities of the Higgins Plant employees. There is no evidence that any employees at the Employer's other plants have substituted for the Higgins Plant employees. With respect to the absence of employees due to sickness or vacations, the Higgins Plant employees cover their own absences and vacations. The Employer has not utilized employees from other plants to cover these absences and vacations.

### F. The Unit

The Petitioner has represented the Unit employed by the Employer and its predecessor in its Southern Nevada operations for more than 25 years. Another local of the International Brotherhood of Electrical Workers represents employees involved in generation, transmission, clerical work, and other duties in the Employer's Northern Nevada operations. The current collective-bargaining agreement between the Petitioner and the Employer is effective from February 1, 2008, to February 1, 2011, and covers employees employed in Clark and Nye Counties, Nevada, in the following classifications: Customer Service, Districts, Material/Warehousing, Reprographic Services, Mail Room/Receiving Departments, Line, Fleet Services, Meter Services, Communications, Materials, Generation, Substations, and Survey Organizations. The collective-bargaining agreement contains a separate section for Generation that includes descriptions for 30 job classifications and wage rates for 31 job codes and titles. It also contains a letter of agreement between the parties for the Chuck Lenzie Plant with four additional job classifications and wage rates. These four job classifications represented a merger of positions to cover operations and maintenance. Generally, these Generation job classifications cover operations and maintenance, although the parties entered into an agreement on July 13, 2005, to create a warehouse technician position for generating facilities.

# G. Bargaining History for the Generating Stations

Before it acquired the Higgins Plant, the Employer acquired two other generating stations, the Chuck Lenzie and Silverhawk Plants. The Employer purchased the Chuck Lenzie Plant as a newly-constructed facility and staffed it with employees represented by the Petitioner. This staffing resulted in the letter of agreement between the parties, described above, which was entered into by the parties before the Chuck Lenzie Plant became operational. The Employer acquired the Silverhawk Plant as an operating facility from Arizona Public Service (APS). Another local of International Brotherhood of Electrical Workers from Phoenix, Arizona, represented the Silverhawk Plant employees. The acquisition agreement between the Employer, APS, the Petitioner, and the Phoenix local provided that the Petitioner would assume the representation of these Silverhawk Plant employees.

The Petitioner submitted into evidence a letter, sent to the Employer and dated April 25, 2008, in which it claimed that the Employer agreed to voluntarily recognize the Petitioner as the collective-bargaining representative of the Higgins Plant employees. The Employer disputes this claim. By a letter dated October 30, 2008, the Employer informed the Petitioner that it did not recognize the Petitioner as the representative of the Higgins Plant employees. The parties exchanged letters thereafter. On November 21, 2008, the Petitioner filed an unfair labor practice charge in Case 28-CA-22241 with Region 28, alleging a violation of Section 8(a)(1) and (5) of the Act by the Employer's refusal to apply the collective-bargaining agreement to the Higgins Plant employees. This charge is being held in abeyance. The record shows that the Petitioner obtained two signed union authorization cards from the Higgins Plant employees.

# H. Wages and Benefits of the Higgins Plant Employees

While the record does not indicate the amount of wages paid to the Higgins Plant employees as compared to generating station employees represented by the Petitioner, the purchase agreement between Reliant and the Employer required that the Employer provide the Higgins Plant employees with "...compensation, including base pay and annual incentive compensation opportunity (excluding equity compensation) equivalent to that paid to similarly situated employees of [the Employer]...." The Employer developed a pay system for the Higgins Plant employees and determined to implement an increase in wages for these employees shortly after acquisition. It appears that this wage increase makes the wages of the Higgins Plant employees equivalent to the wages paid to other generating station employees.

With regard to benefits, the purchase agreement between Reliant and the Employer required that the Employer provide the Higgins Plant employees with "...benefits (including severance benefits) on a basis substantially similar to those provided to similarly situated employees of [the Employer]." Certain benefit programs available to the Higgins Plant employees are the same as the Employer makes available to its other MPAT employees and to employees represented by the Petitioner, including medical, prescription drug, dental, vision, disability, group life insurance, flexible spending accounts, and wellness benefits. The current collective-bargaining agreement between the parties incorporates what is termed the Employer Comprehensive Welfare Benefit and Cafeteria Plan that includes the above-described programs. It also appears that MPAT employees, including those at the Higgins Plant, and Unit employees are subject to the same "Cash Balance" retirement plan. Holidays for both Unit employees and MPAT employees are the same. MPAT employees and one group of employees represented by the Petitioner are under the same Paid Time Off leave system.

# I. Contact With the Higgins Plant Employees

Each morning, a plant operator at the Higgins Plant and other plant operators of the Employer report the status of their respective generating stations during a morning conference call that includes gas traders, power traders, and the balancing authority operator. As an

example, the gas traders may identify the amount of natural gas available that day, thus limiting the amount of electricity generated by the gas-fired plants.

The record also reflects other instances of contact between the Higgins Plant employees and employees of the Employer's other facilities. For example, after the Employer acquired the Higgins Plant, a Clark Plant Material Specialist talked to Dan Torres about obtaining a vibration probe from the Higgins Plant. Torres drove the probe over to the Clark Plant. Similarly, a Silverhawk Plant Production Technician assisted Higgins Plant employee Kevin Newcomb in locating and loading a power panel for use at the Higgins Plant in or about September 2008, before the October 21, 2008, transfer of the Higgins Plant to the Employer. Thereafter, Higgins Plant employees David Cairns and David Rettke returned to the Silverhawk Plant where they were met by a Silverhawk Plant operator who showed them the location of the power panels. Additionally, as was the practice before the acquisition, the Employer's transmission operator spoke to the Higgins Plant operator during the process of re-energizing the Higgins Plant.

## J. Accretion Standard

In *E. I. Du Pont de Nemours, Inc.*, 341 NLRB 607 (2004), the Board explained that it permitted accretion "only when the employees sought to be added to an existing bargaining unit have little or no separate identity and share an overwhelming community of interest with the preexisting unit to which they are accreted." Among the factors the Board considers in assessing community-of-interest are integration of operations, centralized control of management and labor relations, geographic proximity, similarity of terms and conditions of employment, similarity of skills and functions, physical contact among employees, collective bargaining history, the degree of employee interchange, and the degree of separate daily supervision. *E. I. Du Pont*, supra at 608; *Compact Video Services*, 284 NLRB 117, 119 (1987). However, as stated in *E. I. Du Pont*, the "two most important factors" – indeed, the two factors identified as "critical" to an accretion finding – are employee interchange and common day-to-day supervision. *Frontier Telephone of Rochester, Inc.*, 344 NLRB 258, 259 (2005); *Super Valu Stores*, 283 NLRB 134, 136 (1987), citing *Towne Ford Sales*, 270 NLRB 311, 312 (1984).

Here, there is no evidence that since the acquisition the Employer has interchanged the Higgins Plant employees with employees at its other generating stations on either a temporary or permanent basis. As to daily supervision, the Employer has placed an Operations Manager over its nine Higgins Plant Operators and a Maintenance Manager over its five Maintenance Specialists. These managers have no authority over employees at any of the other generating stations. However, both of the Higgins Plant managers report to an acting plant director who serves as acting director for a region that includes the Higgins, Clark, and Sunrise Plants. In addition, the Employer utilized another plant director and its Director of Outages and Work Management as interim directors for the Higgins Plant after its acquisition.

# K. System-wide Public Utility Preference

Consideration of these two factors, however, does not end the inquiry. Other community-of-interest factors support accretion here. The Board has long held that in public utility industries a system-wide unit is optimal. *New England Telephone & Telegraph Co.*, 280 NLRB 162 (1986); *New England Telephone & Telegraph Co.*, 90 NLRB 639 (1950); *TRT Telecommunications Corp.*, 230 NLRB 139 (1977). See also *Baltimore Gas & Electric Co.*, 206 NLRB 199 (1973); *Gulf States Telephone Co.*, 118 NLRB 1039 (1957). In *Baltimore Gas & Electric*, supra at 201, the Board stated:

That judgment has plainly been impelled by the economic reality that the public utility industry is characterized by a high degree of interdependence of its various segments and that the public has an immediate and direct interest in the maintenance of the essential services that this industry alone can adequately provide. The Board has therefore been reluctant to fragmentize a utility's operations. It has done so only when there was compelling evidence that collective bargaining in a unit less than system-wide in scope was a "feasible undertaking" and there was no opposing bargaining history.

Here, the placement of the Higgins Plant in the Employer's Clark Region with Steven Page serving as the Acting Director for the Higgins, Clark, and Sunrise Plants, and the assignment of Christine Henshaw to serve as the Employer's safety representative for both the Higgins and Clark Plants, suggest that the Employer has not sought to isolate or "fragmentize" the operations of the Higgins Plant. The Board considers its preference for a system-wide public utility unit to be a rebuttable presumption which does not foreclose the possibility of finding a smaller unit to be appropriate. See, e.g., *Alyeska Pipeline Service Co.*, 348 NLRB 779, 780 (2006). Considering other community-of-interest factors here, I find that the system-wide public utility presumption has not been rebutted.

# L. Community-of-Interest Factors

The community-of-interest factors described above support the accretion and unit clarification sought by the Petitioner. The Employer has integrated the Higgins Plant into its overall operations through its payroll, materials and work orders, safety, and communication systems. Employees at the Higgins Plant carry Employer-issued identification cards, have Employer-issued identification numbers, and appear on the Employer's intranet with their Employer-issued telephone numbers and e-mail addresses. Plant Operators at the Higgins Plant participate in daily conference calls with other plant operators and other employees concerning power generation that day. The Higgins Plant employees also share the same human resource partner with other Unit employees, and the Employer utilized its human resource department to interview and hire the former Bighorn Power Plant employees and develop their compensation and benefit packages. As discussed above, the Employer has centralized its management of the Higgins Plant employees through the acting director over the Clark Region. This acting director reports to the Employer's vice president over power generation, who manages plant directors for all of the Employer's generation stations.

The Higgins Plant employees enjoy wages and benefits similar, if not identical, to those enjoyed by other generating station employees represented by the Petitioner. Thus, the purchase agreement for the Higgins Plant required the Employer to pay the Higgins Plant employees wages "equivalent" to that paid to similarly situated employees of the Employer. The Employer provided the Petitioner notice when it adjusted the wages of the Higgins Plant employees. Both Unit and the Higgins Plant employees are able to participate in the Employer's Comprehensive Welfare Benefit and Cafeteria Plan and its Cash Balance retirement plan. The only difference in benefits appears to be the paid time-off system.

The Employer continues to operate the Higgins Plant with two operators while it utilizes three operators for virtually identical generation equipment at the Silverhawk Plant. However, the record establishes that skills of the Higgins Plant employees, both Plant Operators and Maintenance Specialists, are the same as those at the Employer's other generating stations. There is nothing unique about the generating equipment at the Higgins Plant or the operation and maintenance of such equipment. While the Employer may expect more from the Higgins Plant employees in terms of their ability to set work priorities and assignments, I do not consider this expectation or its exercise by employees so significant as to distinguish the skills of the Higgins Plant employees from other employees in the Unit. With regard to physical contact between the Higgins Plant employees and other employees, the record establishes instances of such contact through the trading of equipment and the normal operations of the Employer, including morning conference calls and communications related to outages and other normal operations.

The distance from the Higgins Plant to the nearest generating station, the Clark Plant, is 45 miles. However, in the setting of a public utility, I do not consider this distance a significant factor, especially since the Employer has placed Steven Page, who is located at the Clark Plant, in charge of the Higgins Plant as part of its Clark Region.

Concerning the collective-bargaining history, the Petitioner's proffered letter summarizing an alleged conversation with the Employer's representative does not establish that the Employer agreed to include the Higgins Plant employees in the Unit, especially where the Employer disputes the Petitioner's version of events. Once the Employer actually acquired the Higgins Plant, it made clear to the Petitioner that it did not recognize it as the bargaining representative for the Higgins Plant employees. Similarly, the Employer's acquisition of other generation stations now included in the Unit fails to establish a pattern of conduct that would support including the Higgins Plant employees in the Unit. In the case of the Chuck Lenzie Plant, the Employer staffed a newly-constructed generating station with employees represented by the Petitioner. In the case of the Silverhawk Plant, the Petitioner agreed to become the collective-bargaining representative of the Silverhawk Plant employees who had been represented by another local of the International Brotherhood of Electrical Workers. Neither of these actions supports a claim that the Employer should add the Higgins Plant employees to the Unit based on collective-bargaining history.

The fact that a majority of the Higgins Plant employees apparently did not support the Petitioner in its organizing efforts does not require a contrary result. The evidence discussed

above, including the integration of the Higgins Plant operations into the Employer's overall operations; the assignment of an acting plant director and a safety representative over the Higgins Plant who serve in similar capacities for other plants within the Employer's same geographic Region; and the similarity of skills, duties, wages, and fringe benefits between the Higgins Plant employees and other Unit employees all support the conclusion that there is there is little difference between the Higgins Plant employees and other generation station employees represented by the Petitioner. In these circumstances, and in light of the Board's preference for finding system-wide public utility units optimal, it is appropriate to accrete the Higgins Plant employees into the existing Unit.

#### M. Material/Warehouse Personnel

The Employer utilizes Daniel Torres as a warehouseman at the Higgins Plant. As described above, Torres is employed by a contractor retained by the Employer. Torres held a similar position employed by a contractor while at the Clark Plant before he moved to the Higgins Plant. While a Clark Plant Material Specialist described Torres' duties as similar to his own while working at the Clark Plant, there is scant record testimony concerning Torres' duties at the Higgins Plant. Similarly, there is little testimony concerning who supervises Torres at the Higgins Plant, and the interaction between the Employer and its contractor with respect to Torres. In these circumstances, I decline to add Torres or the warehouse classification at the Higgins Plant to the Unit.

#### N. Conclusion

Based on the foregoing and the record in this proceeding, I clarify the Unit to include the positions of Higgins Power Plant plant operator and maintenance specialists.

#### **ORDER**

IT IS HEREBY ORDERED that the bargaining unit, made up of the employees involved in the generation, distribution, and transmission of electric power in the Employer's Southern Nevada operations, represented by the Petitioner, shall be clarified to include the Higgins Power Plant plant operators and maintenance specialists, but shall not include the warehousemen classification.

# RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, N.W., Washington, D.C., 20570. The Board in Washington must receive this request by the close of business at 5:00 p.m. (EDT) on

March 26, 2009. A copy of the request for review should also be served on the undersigned. The request may be filed electronically through E-Gov on the Board's website, www.nlrb.gov,<sup>2</sup> but may not be filed by facsimile.

Dated at Phoenix, Arizona, this 12<sup>th</sup> day of March 2009.

/s/Cornele A. Overstreet

Cornele A. Overstreet, Regional Director National Labor Relations Board

<sup>&</sup>lt;sup>2</sup> To file the request for review electronically, go to <a href="www.nlrb.gov">www.nlrb.gov</a> and select the E-Gov tab. Then click on the E-Filing link on the menu. When the E-File page opens, go to the heading Board/Office of the Executive Secretary and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, <a href="www.nlrb.gov">www.nlrb.gov</a>.